DRN-4877726

The complaint

This complaint is about a mortgage Mrs N hold with Topaz Finance Limited trading as Heliodor Mortgages (Heliodor). The essence of the complaint is that Mrs N believes Heliodor isn't treating her fairly because it's reporting the conduct of the mortgage on her credit file when she is no longer responsible for, or capable of affecting, its conduct. Mrs N is also unhappy that Heliodor won't remove her from the mortgage altogether.

What happened

The broad circumstances of this complaint are known to Mrs N and Heliodor. I'm also aware that the investigator issued a detailed response to the complaint, a copy of which has been sent to all parties, and so I don't need to repeat all the details here. Our decisions are published, and it's important that I don't include any information that might result in Mrs N being identified.

Instead I'll give a brief summary in my own words and then focus on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

Mrs N's mortgage started in 2007, with a lender I'll call N, and was secured on a property I'll refer to as 18C. It was, and still is, a joint mortgage taken out with Mrs N's then husband, whom I'll call Mr F. N later became a closed lender and subsequently a large tranche of its mortgage accounts (including this one) was transferred to Heliodor.

As well as 18C, Mrs N and Mr F also owned a portfolio of buy-to-let (BTL) properties, which have mortgages with a different lender, also in joint names. As part of the divorce settlement, the court ordered that Mrs N's interest in the properties, including 18C, be transferred to Mr F. The court also ordered that he was to try to secure Mrs N's release from the mortgages and in the meantime to indemnify her against any ongoing liability. Since then Mr F hasn't made applications to transfer 18C, or the other properties, to his sole name, and has not applied to Heliodor to transfer the mortgage on 18C into his sole name either.

Mrs N says that she believes Mr F's conduct is driven not because of financial difficulty – as of now, the mortgage on 18C is, as I understand it, being paid - but in order to control and punish her, thus perpetuating an abusive relationship.

Mrs N says that she understands that 18C is a residential property, but she has given us a different address as her own residence, and hasn't said whether she knows who resides in 18C, and on what basis. That may be because, under the terms of the court order, Mrs N has no control over 18C, or the payments being made on the mortgage over it. Meanwhile, Mrs N has her own residential mortgage to pay from her own resources. She says that due to the reporting on her credit file, she's been unable to secure a new interest rate deal on her own mortgage, and is now in arrears on the increased payments.

Mrs N has told us she also runs the risk of losing her job as a result of the credit file reporting because she's subject to regular fitness and background checks as part of her role. Mrs N is therefore very worried about the ongoing impact of the credit file reporting. She recognises

that she's still a party to the mortgage, but that's not a situation of her own making – it's only because Mr F is apparently not complying with the court order.

Mrs F has returned to court to try and enforce the order but is very concerned about the impact on her and her family in the meantime. And the reality is that she has no control over the mortgage or whether it is paid. Mrs N asked Heliodor to remove her from the mortgage or, if not, make an exception and not report the mortgage to her credit file due to the negative impact it is having on her.

Initially, Heliodor didn't reply to Mrs N's letters; when it did, it apologised for the oversight and offered Mrs N £50 compensation. On the substantive issues, however, Heliodor declined to remove Mrs N from the mortgage or discontinue reporting the mortgage conduct on her credit file.

When the case came to us, our investigator wasn't persuaded Heliodor should be ordered to remove Mrs H from the mortgage unless and until Mr F applied to take sole responsibility for it. But in the very specific circumstances that applied here, he considered the fair thing for Heliodor to do was to stop reporting the mortgage conduct on Mrs N's credit file, effective from the date of the court order. He thought the offer of £50 for failing to reply to the original letters was fair.

Both parties disagreed with the investigator's recommended settlement. Heliodor maintained it had a legal, regulatory and contractual obligation to report. Mrs N says that not releasing her from the mortgage exposes her to the risk of harm if Mr F stops paying the mortgage on 18C. Amongst other things, Mrs N says we've not considered the obligations that the Consumer Duty imposes on Heliodor.

What I've decided – and why

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, what follows are my conclusions, and the reasons for them. To be clear, these are fact-specific, relate solely to the individual circumstances of this individual complaint, and my decision in no way sets any precedent for any other complaint.

I'll deal first with Mrs N's comments about the Consumer Duty. At the time of the transfer of the mortgage to Heliodor, N was a closed-book lender, and Heliodor is itself a closed-book lender. Whilst the Consumer Duty came into effect generally on 31 July 2023, it doesn't come into effect for closed lending books until 31 July 2024.

That means that for the purposes of deciding what is far and reasonable here, the Consumer Duty provisions aren't a relevant consideration. For completeness however, I will observe that in its deliberations on how to respond to the complaint, Heliodor has taken into account Mrs N's susceptibility to financial harm.

As far as removing Mrs N from the mortgage altogether is concerned, I don't think it fair, reasonable or proportionate to *order* Heliodor to do that whilst her name remains on the property title. I appreciate that will frustrate and disappoint Mrs N, and I don't want her to think I am not sympathetic towards her very unusual situation. But I have to be fair to both parties, and here, that means taking account of Heliodor's concern that if it ever wanted to enforce the mortgage against Mr F, it would also need to serve on Mrs N, as joint owner of the security, who could choose to defend the action in her own right.

In some respects, the issue of credit file reporting is more finely balanced. Dealing first with what the business has said, I agree with Heliodor when it says it has the right to report the conduct of the mortgage on Mrs N's credit file. But Heliodor's *right* to do so has never been in dispute and isn't the issue here. Of greater relevance is whether it *obliged* to do so, and here Heliodor has variously argued that it legally and contractually obliged, as well as being required by the regulator, to do so.

I'm aware of no legal obligation on financial business generally to report to credit reference agencies. Similarly, whilst Heliodor is an FCA-regulated business, I'm not aware of any rule in the Mortgage and Home Finance: Conduct of Business Sourcebook (MCOB) or elsewhere that *requires* a lender to report to a credit reference agency.

Rather, it's my understanding that it's a business practice, and one agreed to by customers by virtue of the terms and conditions of a lending agreement rather than a regulatory requirement. All that is required is that, if a business does report, it must do so fully and accurately - but that comes from The General Data Protection Regulation, combined with guidance from the Information Commissioner's Office, rather than from FCA regulation.

That leaves the contractual position. As I've indicated above, the contract between a lender and a borrowers *allows* a lender to report; it doesn't *force* it to. I've noted Heliodor's point that is has a contractual commitment with each credit reference agency to supply complete and accurate data relating to its customers. But it seems to me that this argument goes to my earlier point that data, if supplied, must be full and accurate; not that data must be supplied. In any event, I consider that all of that is trumped by Heliodor's regulatory obligation to treat its customer fairly.

I've also borne in mind the purpose behind credit file reporting. In essence, it's to share information among credit providers about the conduct of credit accounts, to enable future lenders to make better lending decisions. This protects lenders from lending to customers more likely to default, and protects customers from taking on credit they might not be able to afford. Credit files should therefore be a fair and accurate record of a borrower's credit history.

In one sense, Mrs N's credit file is a fair and accurate record. She is party to the mortgage, the mortgage isn't in arrears (at least at the time of writing) and that's what her credit file says. However, in another sense, Mrs N's credit file is not fair and accurate. It's not fair or accurate to say that she has a choice in whether the mortgage payments are made, that she the power to manage this particular credit commitment, or that her capacity to manage it is or might be hindered by financial difficulty.

The reality is that Mrs N has no control over this mortgage, its payment record, or the property it is secured on. Contractually, she remains jointly and severally liable for it. That's an important factor to bear in mind – but it's not determinative of itself.

There are many situations where two people jointly agree to take on a credit commitment, the relationship between them breaks down, and they agree between them that one or the

other will take over managing the commitment. That doesn't change the fact that both of them agreed to take it on, and both of them remain jointly and severally liable for it. And it's not in principle unfair for a lender to continue to report the conduct of the account to both parties' credit files.

However, I'm not deciding a general principle here. I'm deciding what's fair and reasonable in the particular circumstances of an individual case. In this particular case, a court has made it clear that Mrs N has no interest in, or liability for, the property. The court said that Mr F should try and get her released from the mortgage. There doesn't seem to be any reason why such an application wouldn't succeed – but he hasn't made it.

In summary, even though the mortgage is, for the moment, being paid, I consider that continuing to report it to Mrs N's credit file is having, and risks continuing to have, a disproportionate impact on her. That's because even if it's not adverse, the reporting is still there, and influences prospective lenders' opinions of Mrs N's lending commitments and capacity to take on credit.

My final decision

My final decision is that I order Topaz Finance Limited trading as Heliodor Mortgages (Heliodor) to remove all reports of the mortgage secured over the property 18C transferred to Mr F in the court order from Mrs N's credit file, with effect from the date of the court order onwards.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 13 August 2024.
Jeff Parrington
Ombudsman